

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 96-0256 JP

CESAR CHACON,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

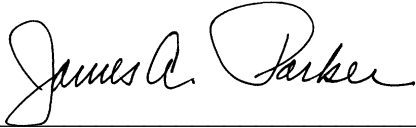
This matter is before the Court on Defendant's Petition for Writ of Audita Querela (Doc. 51). Defendant alleges that "at the time of his offense and indictment he was a juvenile, seventeen years old." He asserts that his criminal proceeding was not certified as an adult prosecution or properly transferred to the Court, as required by statute. As a result, he asserts, the Court had no jurisdiction to sentence him. He asks the Court to "void his conviction in this matter and expunge his criminal record of this conviction." The Court will deny the petition.

First, Defendant's claim against his conviction is not appropriate for an *audita querela* proceeding. "[A] writ of *audita querela* is used to challenge a judgment that was correct at the time rendered but which is rendered infirm by matters which arise after its rendition." *United States v. Torres*, 282 F.3d 1241, 1245 n.6 (10th Cir. 2002). Here, by contrast, Defendant's claim is that his conviction was "infirm" at the time judgment was entered. Because Defendant does not assert a claim that arose after judgment was rendered, no relief is available under *audita querela*.

And second, Defendant raised this same claim in his earlier Motion to Vacate Judgment Pursuant to Title 28 U.S.C. § 1651(a) Coram Nobis (Doc. 47) and in his Rule 59(e) Motion "To Alter or Amend Judgment" (Doc. 49). The Court dismissed the first motion and denied the second,

and Defendant's claim is thus barred by the doctrine of res judicata. *See Plotner v. AT & T Corp.*, 224 F.3d 1161, 1168 (10th Cir. 2000); *and see Jetero Const. Co., Inc. v. South Memphis Lumber Co., Inc.*, 531 F.2d 1348, 1352 (6th Cir. 1976) ("A party should not be allowed to force a District Court to consider for a third time arguments previously made."). The Court will deny Defendant's petition.

IT IS THEREFORE ORDERED that Defendant's Petition for Writ of Audita Querela (Doc. 51) is DENIED.


UNITED STATES DISTRICT JUDGE